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No. 91-671

In The

Supreme Court of the United States

October Term, 1991

GEORGE O. SANDERS, GEORGE H. O'BRIEN, and TANBARK OIL COMPANY 1978-1, LTD.,

Petitioners,

v.

CITY OF BRADY, TEXAS,

Respondent.

Petition For Writ Of Certiorari To The United States Court Of Appeals For The Fifth Circuit

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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The City of Brady, Texas ("City of Brady"), the Respondent in this Petition For Writ Of Certiorari ("Petition"), files this Brief Of Respondent In Opposition To Petition For Writ Of Certiorari. The Petitioners in this Petition are George O. Sanders, Tanbark Oil Company 1978-1, Ltd., and George H. O'Brien. The predecessors in interest to George O. Sanders, Tanbark Oil Company 1978-1, Ltd., and George H. O'Brien include Vista Resources, Inc. and Tanbark Oil Company. (For the convenience of the Court, all of the Petitioners and their predecessors in interest will be referred to as "Sanders.") The Chapter 11 Debtor, Brady, Texas, Municipal Gas Corporation ("Brady Gas"), was not a party to the appeal and is not a party in this Petition.

STATEMENT OF THE CASE

Although having pursued and lost his claim in all three levels of the Texas court system, Sanders claimed in the Bankruptcy Court for the first time that the state court had no jurisdiction. Sanders originally initiated and pursued in state court an action against Brady Gas. Brady Gas filed for Chapter 11 relief and achieved confirmation of a Plan of Reorganization. Sanders then added the City of Brady to the action in state court and pursued the action. The City of Brady sought and received a summary judgment in its favor in the state court. Sanders appealed but failed to overturn the summary judgment. Despite taking no action in the Bankruptcy Court for four years and losing at all three levels of the state court system, Sanders sought judgment in the Bankruptcy Court against the City of Brady for the same claim Sanders had

asserted against the City of Brady in state court. The Bankruptcy Court recognized the *res judicata* effect of the state court summary judgment and dismissed the claim of Sanders against the City of Brady. Sanders again seeks to have the state court summary judgment ignored and judgment granted against the City of Brady. The efforts of Sanders to escape the results of his own actions must be halted.

On September 13, 1979, Sanders sued Brady Gas in Cause Number 25-138 in the 35th Judicial District Court of Brown County, Texas, seeking damages for the alleged breach of a farmout agreement ("Farmout Agreement") by Brady Gas. (Cause Number 25-138 and all subsequent severances and appeals will be referred to collectively as the "State Court Action.") On June 20, 1980, Brady Gas filed its Voluntary Petition under Chapter 11, thereby initiating Case Number 1-80-BK-00219 in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division.

On January 12, 1981, Brady Gas filed its First Alternate Plan Of Reorganization ("Plan") which was confirmed by an Order Confirming Plan signed by the Honorable Bert W. Thompson on February 4, 1981. The Plan provided that the property of Brady Gas would be transferred to the City of Brady. The transfer occurred on February 5, 1981. On October 13, 1983, without changing the factual allegations, Sanders merely added the City of Brady as a defendant in the State Court Action.

On December 18, 1984, the state district court in the State Court Action entered its Summary Judgment In Favor Of Defendant City Of Brady, Texas And Order Of

Severance ("City of Brady Summary Judgment"), which was affirmed on August 22, 1985, by the Eleventh Court Of Appeals of Texas.

On January 15, 1986, the Texas Supreme Court denied the writ of error sought by Sanders. *See Tanbark Oil Co. 1978-1 v. City of Brady, Texas,* 29 Tex.Sup.Ct.J. 140-41 (Jan. 15, 1986). On February 19, 1986, the Texas Supreme Court overruled the Motion For Rehearing filed by Sanders. *See Tanbark Oil Co. 1978-1 v. City of Brady, Texas,* 29 Tex.Sup.Ct.J. 222 (Feb. 19, 1986).

Even though all three state courts ruled against him and in favor of the City of Brady, Sanders continued to seek relief in the Bankruptcy Court through various pleadings filed against the City of Brady seeking damages for the alleged breach of the Farmout Agreement. Some of these pleadings were filed in Adversary Proceeding Number 1-80-0096 and Adversary Proceeding Number 1-86-0035. Sanders also filed in the Chapter 11 Case a Motion For Order Compelling Debtor And Its Successor-In-Interest, The City Of Brady, To Make Distribution Upon Movant's Allowed Claim Pursuant To Confirmed Plan Of Reorganization ("Motion To Distribute"), seeking payment for alleged damages for breach of the Farmout Agreement. The Bankruptcy Court, the Federal District Court, and the United States Court of Appeals for the Fifth Circuit all ruled against Sanders, *see Sanders v. City of Brady (Matter of Brady, Texas, Municipal Gas Corp.),* 936 F.2d 212 (5th Cir. 1991), and Sanders has now filed the Petition requesting that this Court grant a writ of certiorari.

SUMMARY OF THE ARGUMENT

Sanders fails to present any important questions of federal law that need to be settled, and no conflict exists between the Fifth Circuit and the District of Columbia Circuit with respect to circular preclusion. The Petition involves only the straightforward application of the Full Faith and Credit Act, 28 U.S.C. § 1738, to a judgment granted in favor of the City of Brady by the Texas state courts. Sanders attempts to distinguish on the facts the principal case regarding full faith and credit, *Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768, 88 L.Ed.2d 877 (1986), but his distinctions are irrelevant to the application of full faith and credit.

Sanders argues implicitly, albeit erroneously, that the Bankruptcy Court had exclusive jurisdiction to determine the claim of Sanders, but the relevant federal statute clearly granted the Texas state courts concurrent jurisdiction. Sanders also argues, again erroneously, that only federal courts can determine the effect of a federal judgment and that the Bankruptcy Court and the Texas state courts failed to consider federal law.

ARGUMENTS AND AUTHORITIES

I. THIS PETITION INVOLVES ONLY THE SIMPLE APPLICATION OF FULL FAITH AND CREDIT AND PRESENTS NO IMPORTANT QUESTIONS OF FEDERAL LAW WHICH NEED TO BE SETTLED.

This Petition does not involve any important questions of federal law that need to be settled by the Court.

The Petition involves only the simple application of the Full Faith and Credit Act, 28 U.S.C. § 1738, to a final decision of a state court. This Court has repeatedly issued opinions on the effect of the Full Faith and Credit Act, and the law is accordingly clear with respect to the binding effect of state court judgments on federal courts.

A. The Full Faith And Credit Act And Texas Law Require The Application Of *Res Judicata*.

The Full Faith and Credit Act required the Bankruptcy Court to give full preclusive effect to the City of Brady Summary Judgment granted in the State Court Action. The federal courts must recognize and apply the preclusion law of the state in which the judgment was rendered. *See Kremer v. Chemical Construction Corp.*, 456 U.S. 461, 481-82, 102 S.Ct. 1883, 1898, 72 L.Ed.2d 262 (1982). Under Texas law, if causes of action are taken to final judgment, *res judicata* bars relitigation of the causes of action. *See McWilliams v. McWilliams*, 804 F.2d 1400 (5th Cir. 1986) (Under the Full Faith and Credit Act, *res judicata* under Texas law barred reconsideration of a divorce decree.).

According to Texas law, plaintiffs are precluded by the principles of *res judicata* from twice seeking judgment on the same cause of action. The preclusion is effective regardless of what issues were actually determined. In *Segrest v. Segrest*, 649 S.W.2d 610, 612 (Tex. 1983), the Texas Supreme Court held that a "final judgment settles not only issues actually litigated, but also any issues that could have been litigated." *See also Evans v. Dale*, 896 F.2d 975, 977 (5th Cir. 1990); *Scott v. Fort Bend County*, 870 F.2d 164, 167 (5th Cir. 1989). In the case *sub judice*, Bankruptcy

Judge Kelly recognized that Sanders alleged no new causes of action and that Sanders was therefore barred from seeking recovery against the City of Brady.

Furthermore, the fact that the Supreme Court of Texas has ruled on the State Court Action obligates all state courts to recognize the judgment in favor of the City of Brady. *See Texas Employers Ins. Ass'n v. Tobias*, 740 S.W.2d 1, 2 (Tex. App. – San Antonio 1986, writ ref'd) (The Court of Appeals of Texas in San Antonio was compelled to follow the decision of the Texas Supreme Court regardless of whether the Court of Appeals agreed with the decision.). Since the state courts must recognize the judgment, the federal courts must also recognize the judgment. *See Scott*, 870 F.2d at 166-68.

B. *Parsons Steel* Supports The Application Of Full Faith And Credit With Respect To The City Of Brady Summary Judgment.

In a closely analogous case, this Court held that a federal court must honor a state court judgment which, like the City of Brady Summary Judgment, was litigated to conclusion in the state court. *See Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 106 S.Ct. 768, 88 L.Ed.2d 877 (1986). In *Parsons*, an Alabama state court ruled that *res judicata* did not bar a state court lawsuit even though a federal court had issued a ruling in a case between the same parties. A judgment was subsequently rendered in the Alabama state court, and this Court ruled that the federal court was required to give full faith and credit to the state court judgment.

This Court held that, under the Full Faith and Credit Act, a federal court was obliged to honor a completed state court lawsuit that had resulted in a final judgment concerning the merits of the *res judicata* issue. *Parsons*, 474 U.S. at 524. The Court referred to "the important values of federalism and comity embodied in the Full Faith and Credit Act." *Parsons*, 474 U.S. at 523. It is clear, under *Parsons*, that a state court has the power to interpret a federal court judgment and determine the *res judicata* effect of the federal judgment.

C. The Correctness Of The Decision Of The State Court Is Immaterial To The Application Of Full Faith And Credit.

In his Petition Sanders attacks the correctness of the City of Brady Summary Judgment. However, under the Full Faith and Credit Act, the correctness of a state court decision is irrelevant to the application of full faith and credit. Federal courts must give full faith and credit to state court judgments even if the federal courts believe that the state court decisions are totally erroneous. *See Salazar v. United States Air Force*, 849 F.2d 1542 (5th Cir. 1988); *McWilliams v. McWilliams*, 804 F.2d 1400 (5th Cir. 1986).

The Texas law on *res judicata* is in accord with *Salazar*. In Texas, *res judicata* applies regardless of whether the first court determined the question before it correctly or erroneously. In *Segrest*, 649 S.W.2d at 612, the Texas Supreme Court held: "That the judgment may have been wrong or premised on a legal principle subsequently overruled does not affect application of *res judicata*." *See*

also Federated Dep't Stores, Inc. v. Moitie, 452 U.S. 394, 398, 101 S.Ct. 2424, 2428, 69 L.Ed.2d 103 (1981); *Delesma v. City of Dallas*, 770 F.2d 1334, 1339 (5th Cir. 1985).

Furthermore, the dismissal of Adversary Proceeding Number 1-80-0096 resulted in a resolution against Sanders of the claim of Sanders. Adversary Proceeding Number 1-80-0096 involved the claim of Sanders for damages, and Brady Gas challenged the claim in the Answer and Counterclaim filed by Brady Gas in Adversary Proceeding Number 1-80-0096. The City of Brady therefore does not concede that the decision of the Texas appellate court was erroneous or that the claim of Sanders was not resolved in the bankruptcy case. To the contrary, the City of Brady has continually pointed out that the Adversary Proceeding was resolved against Sanders.

Sanders quotes the bankruptcy court opinion in which Bankruptcy Judge Ayers asserted that preclusion could not be given to a "non-existent" ruling of the Bankruptcy Court. However, Bankruptcy Judge Ayers either did not acknowledge or did not know that an order had been entered dismissing Adversary Proceeding Number 1-80-0096. *See* Petition Appendix D, p. A-55 ("A Proof of Claim and adversary proceeding were on file.").

Furthermore, as explained in Section IV-C, a final judgment had been entered in the Bankruptcy Court because the Plan had been confirmed and the Order Confirming Plan constituted a final judgment. This final judgment, through the Plan, referred to the claim of

Sanders. Even if the Texas state courts are considered to have misinterpreted the effect of the Order Confirming Plan, as a final judgment, on the claim of Sanders, Bankruptcy Judge Ayers appeared to concede in his opinion that "a state court judgment *misinterpreting* an order of a federal court might not be subject to reconsideration under the doctrine of preclusion." Petition Appendix D, p. A-60. Nevertheless, the opinion of Bankruptcy Judge Ayers is actually irrelevant at this point, since Bankruptcy Judge Kelly entered a subsequent and correct ruling on the Motion To Distribute.

II. NO IMPORTANT QUESTIONS OF FEDERAL LAW ARE RAISED BY THE PETITIONER BECAUSE THE APPLICATION OF FULL FAITH AND CREDIT IS NOT LIMITED TO THE SPECIFIC FACTUAL SITUATION IN *PARSONS*.

Sanders attempts to distinguish *Parsons* on the facts by arguing that *Parsons* left open the question of whether full faith and credit must be given to a state court judgment which, as Sanders claims the City of Brady Summary Judgment did, *gave res judicata effect* to a federal court judgment. Sanders appears to argue that the application of full faith and credit is limited under *Parsons* to decisions in which a state court *rejects* the preclusive *res judicata* effect of a prior federal judgment. Sanders therefore appears to conclude that, because the state courts ruled in favor of the City of Brady by *giving res judicata effect* to a prior federal judgment, no full faith and credit need be accorded the City of Brady Summary Judgment. However, this distinction is without merit and raises no important questions of federal law.

A. The Holding In *Parsons* Required Only A Final Judgment By The State Court And Not A State Court Decision That Rejected The Application Of *Res Judicata*.

It is clear from the holding in *Parsons* that the principal prerequisite for the application of full faith and credit is that the state court *reach a final judgment*. It is immaterial whether the final judgment of the state court denies or gives *res judicata* effect to a federal judgment. Sanders is attempting to distinguish *Parsons* on the facts, but the purported distinction based on the rejection or application of *res judicata* is meritless. The City of Brady obtained a final judgment with its City of Brady Summary Judgment, and the City of Brady Summary Judgment is clearly entitled under *Parsons* to full faith and credit.

This Court indicated in *Parsons* when full faith and credit took effect. The Court referred to whether a state court had "ruled on the merits," *Parsons*, 474 U.S. at 524, and did not limit full faith and credit only to situations in which state courts refused to apply *res judicata*. Here, not only did the state trial court reach a final judgment, but the City of Brady Summary Judgment was also affirmed through all three levels of the Texas state court system.

B. The Factual Distinctions Which The Petitioner Attempts To Make With Respect To *Parsons* Are Immaterial To The Application Of Full Faith And Credit.

Sanders also fails to offer any reason as to why the factual distinction he attempts to make with respect to *Parsons* would affect in any way the application of the

Full Faith and Credit Act. Sanders apparently takes the position that the Full Faith and Credit Act was intended to apply only to cases involving the specific facts and issues in *Parsons* and that, if the exact facts in *Parsons* are not involved, the Full Faith and Credit Act does not apply. But Sanders fails to explain why the Full Faith and Credit Act would be inapplicable to cases which do not involve the specific facts in *Parsons*.

The Full Faith and Credit Act was intended to apply to state court decisions *on any matters*, not just matters involving the *res judicata* effect of federal judgments. This Court in *Parsons* did not say that the Full Faith and Credit Act applied only in cases involving the rejection of *res judicata*. The Full Faith and Credit Act would still apply in other cases even if *Parsons* had never been decided. There is no reason to limit the effect of *Parsons* or of the Full Faith and Credit Act to situations involving the specific facts in *Parsons*.

III. THE TEXAS STATE COURTS HAD CONCURRENT JURISDICTION OVER THE CLAIM OF SANDERS.

The Bankruptcy Court had only concurrent, not exclusive, jurisdiction to resolve the claim of Sanders and to interpret the Plan and the Order Confirming Plan. Under federal statutes, the Texas state courts have concurrent jurisdiction to decide the claims of creditors. Consequently, the Texas state courts had jurisdiction to decide the claim of Sanders and therefore to enter and affirm the City of Brady Summary Judgment.

Sanders does not explicitly state in his Petition that the Texas state courts lacked jurisdiction to resolve the claim or interpret the Plan, but Sanders repeatedly refers to the issue of exclusive jurisdiction. For instance, Sanders takes the position that relief from the Plan and the Order Confirming Plan could only come from federal courts and that the Bankruptcy Court should not have granted preclusive effect to the City of Brady Summary Judgment despite the existence of the Full Faith and Credit Act. Sanders therefore implicitly argues that the Bankruptcy Court had exclusive jurisdiction to determine the claim of Sanders.

A. Concurrent Jurisdiction Exists Under The Relevant Federal Statute.

Under the pertinent federal statute, the Bankruptcy Court clearly had concurrent jurisdiction with the state court, not exclusive jurisdiction. Whether the State Court Action is classified as a proceeding arising under Title 11, or arising in or related to a case under Title 11, the Bankruptcy Court under 28 U.S.C. § 1334(b) had original but not exclusive jurisdiction. *See In re Snedaker*, 39 B.R. 41, 42 (Bankr. S.D. Fla. 1984). All relevant provisions of Section 1334 were in effect also under the former statute, 28 U.S.C. § 1471, as noted by Bankruptcy Judge Kelly and never challenged by Sanders. *See* Petition Appendix C, pp. A-40-41 (Judge Kelly Opinion).

Under 28 U.S.C. § 1334(a), the district court and its adjunct the bankruptcy court have original and exclusive jurisdiction only over cases filed under Title 11. That simply means that a Petition initiating a case under Chapter 7, 9, 11, 12, or 13 of the Bankruptcy Code must be

dismissed if it is filed in a state court. However, the State Court Action brought by Sanders did not constitute a Title 11 case.

B. The Plan Allowed Courts Of Competent Jurisdiction To Resolve The Claim.

The provisions in the Plan even recognized that courts other than the Bankruptcy Court had jurisdiction to decide the claims of Class 4 creditors, which included Sanders. Under Article IV of the Plan, the claims of Class 4 creditors were to be paid at such time as "a court of competent jurisdiction" determined the validity and amounts of the claims. The courts "of competent jurisdiction" included Texas state courts. Sanders pursued his claim through all three levels of the Texas state court system, of his own volition, as authorized by the Plan.

C. The Automatic Stay Was Not In Effect Because The Stay Was Extinguished By The Transfer Of The Assets Of The Debtor And Because The City Of Brady Was A Codefendant.

The automatic stay under 11 U.S.C. § 362 did not prevent the state courts from rendering judgment in the State Court Action, because the automatic stay as to property that was formerly property of the estate had terminated. After the Debtor transferred to the City of Brady the assets of the estate, the assets no longer constituted property of the estate, and the automatic stay previously provided by 11 U.S.C. § 362(a), protecting such property, terminated under 11 U.S.C. § 362(c)(1). *See* Petition Appendix C, p. A-40 (Judge Kelly Opinion). Under

11 U.S.C. § 362(c)(1), the automatic stay against property of the estate continues only "until such property is no longer property of the estate. . . . " *See General Motors Acceptance Corp. v. Fortner Oilfield Services, Inc.* (*In re Fortner Oilfield Services, Inc.*), 49 B.R. 9, 10 (Bankr. N.D. Tex. 1984).

Furthermore, because the City of Brady was only a codefendant with the Debtor Brady Gas, the automatic stay was never in effect as to the City of Brady in the State Court Action. The automatic stay does not apply to codefendants, and the automatic stay does not stay state court actions against codefendants of Chapter 11 debtors even if the codefendants are not severed out of the state court actions. *See Wedgeworth v. Fibreboard Corp.*, 706 F.2d 541, 544 (5th Cir. 1983); *GATX Aircraft Corp. v. M/V Courtney Leigh*, 768 F.2d 711, 715-16 (5th Cir. 1985).

IV. STATE COURTS CAN DETERMINE THE EFFECT OF FEDERAL JUDGMENTS.

Sanders attempts to present as an important issue the argument that only federal courts can determine the effect of federal court judgments. His argument appears to be based on the notion of exclusive jurisdiction and has no support in any statute or case law. The argument of Sanders presents no important questions of federal law that need to be settled by the Court.

Despite the applicability of the Full Faith and Credit Act, Sanders appears to insist that the Bankruptcy Court had exclusive jurisdiction to determine the effect of a prior federal judgment, the Order Confirming Plan. Although his arguments are not entirely clear, Sanders

appears to base his contentions on the following points: (1) the confirmation of the Plan initiated a proceeding in the Bankruptcy Court with respect to the claim of Sanders and this proceeding was to be completed by the Motion To Distribute; (2) the determination of the claim of Sanders was purely a matter for the Bankruptcy Court to determine without any interference or input whatsoever from the state courts; (3) the Texas state courts intervened in this pending federal proceeding when the Bankruptcy Court decided to grant full faith and credit to the City of Brady Summary Judgment; and (4) the decision of the Bankruptcy Court allowed the Texas state courts to determine the effect of the Order Confirming Plan, resolve the claim of Sanders, and thus complete the pending federal proceeding.

Sanders apparently argues that the Full Faith and Credit Act was not intended to permit a state court to become involved in pending federal proceedings, even though it was Sanders who asked the state court to interpret a final order of the Bankruptcy Court, the Order Confirming Plan. The argument of Sanders appears to be based on the concept of exclusive jurisdiction in the bankruptcy court. The City of Brady has established that concurrent jurisdiction existed and that Sanders himself sought a ruling by the state court.

The Fifth Circuit case cited by Sanders to support his argument is inapposite. In *Hardy v. Johns-Manville Sales Corp.*, 681 F.2d 334 (5th Cir. 1982), the Fifth Circuit merely held that in a diversity case a federal court must use federal rules of *res judicata* to determine the effect of a prior federal judgment. *Hardy* did not even involve a state court lawsuit or judgment. The Fifth Circuit in

Hardy did not even consider the issue of whether state courts could determine the *res judicata* effect of federal judgments.

A. State Courts Are Not Prohibited From Issuing Rulings Even If A Federal Action Is Pending.

Even assuming *arguendo* that the bankruptcy case involved one continuous ongoing proceeding, the Texas state courts were not prohibited from rendering a judgment in the State Court Action. Both this Court and the Texas Supreme Court have recognized that, when concurrent jurisdiction exists, cases may be tried at the same time in state and federal courts, and the first judgment rendered is entitled to receive *res judicata* effect. *See Parsons Steel, Inc. v. First Alabama Bank*, 474 U.S. 518, 525, 106 S.Ct. 768, 772, 88 L.Ed. 2d 877 (1986); *see also United Services Life Ins. Co. v. Delaney*, 396 S.W.2d 855, 863 (Tex. 1965).

B. State Courts Are Required To Grant Full Faith And Credit To Federal Judgments And Are Thus Necessarily Obligated To Analyze And Determine The Effect Of Federal Judgments.

One case cited by Sanders, *Delaware Valley Citizens' Council for Clear Air v. Commonwealth of Pa.*, 755 F.2d 38 (3d Cir. 1985), stands for the proposition that state courts must give full faith and credit to federal court judgments, and the state courts in Texas gave the Order Confirming Plan full faith and credit when they complied with the terms of the Plan and the Order Confirming Plan. *Delaware Valley* thus provides additional support for allowing state courts to

determine the effect of federal judgments. It is impossible for state courts to accord full faith and credit to federal judgments if the state courts are not permitted to analyze and determine the effect of the federal court judgments. It is therefore clear that state courts have the jurisdiction to interpret federal court orders such as the Order Confirming Plan.

C. The Bankruptcy Case Involved Separate Matters, Not One Continuous Proceeding.

Sanders erroneously characterizes the proceedings involving the Plan and the Motion To Distribute as one continuous proceeding. The Motion To Distribute, however, was not a continuation of the Plan and the Order Confirming Plan but a second and separate proceeding in the same Title 11 case. A confirmation of a plan is a different proceeding from a motion for distribution on a claim. Both the Order Confirming Plan and the Motion To Distribute arose in the same Chapter 11 case, but the Motion To Distribute was not a continuation of the confirmation process. Under the Bankruptcy Code, a Chapter 11 case can involve many different proceedings and contested matters, and the proceedings and contested matters are considered to be separate and self-contained, not each a continuation of all others. *See, e.g., D-1 Enterprises, Inc. v. Commercial State Bank*, 864 F.2d 36, 39 (5th Cir. 1989). The Texas state courts did not therefore interfere with any ongoing proceeding in the Bankruptcy Court.

Sanders continually refers to the Order Confirming Plan as a "nondispositive interlocutory order." However,

an order confirming a plan of reorganization is not interlocutory. An order confirming a plan is considered to be a final judgment binding on all of the parties. *See, e.g., In re Henderberg*, 108 B.R. 407, 411 (Bankr. N.D.N.Y. 1989) (and cases cited therein). Even the Texas appellate court recognized that the Order Confirming Plan was a final judgment. Sanders argues that the Plan was not dispositive of the claim of Sanders and that the Plan left open the claim to be litigated by a court of competent jurisdiction. But as a final judgment, the Order Confirming Plan was dispositive at the very least as to *how and in which courts* the claim could be resolved, regardless of whether the Plan itself resolved the claim.

D. The Introduction Of The Summary Judgment In The Bankruptcy Court Constituted An Attempt To Comply With, Not To Obtain Relief From, The Plan.

Sanders mischaracterizes the introduction of the State Court Judgment as an attempt to obtain relief from the federal court Order Confirming Plan, but the City of Brady was complying with, not attempting to obtain relief from, the Order Confirming Plan. Sanders cites *Delaware Valley* to support his assertion that relief from the Order Confirming Plan "could only have been obtained from courts having jurisdiction of the Bankruptcy Court's order, *i.e.*, the federal courts." Petition, p. 8. But the state court was authorized to determine the claim under the Plan and the Order Confirming Plan, and therefore letting the Bankruptcy Court know that the state court had decided the claim constituted compliance with, not an attempt to obtain relief from, the Plan and the Order Confirming Plan.

V. THE DECISIONS OF THE BANKRUPTCY COURT AND THE TEXAS STATE COURTS WERE CONSISTENT WITH FEDERAL LAW, AND SANDERS PRESENTS NO IMPORTANT QUESTIONS THAT NEED TO BE SETTLED WITH RESPECT TO THE APPLICATION OF FEDERAL LAW.

Sanders mistakenly argues that the Bankruptcy Court did not look to federal law in reaching its decision. In utilizing this argument, Sanders appears to equate the term "federal law" with the concept of exclusive jurisdiction in the federal court. Sanders presents a strained argument that "federal law" controlled the interpretation of the Plan and the Order Confirming Plan and that therefore the Bankruptcy Court could not rely on the City of Brady Summary Judgment because the City of Brady Summary Judgment embodied only "state law." However, the decisions of the Bankruptcy Court and the Texas state courts remained perfectly consistent with federal law, and, as explained earlier, the Bankruptcy Court did not have exclusive jurisdiction to resolve the claim of Sanders. Sanders presents no important issues that need to be resolved.

The reference of Sanders to "federal law" constitutes an implicit argument that the federal courts had exclusive jurisdiction. If the state courts lacked jurisdiction and the Full Faith and Credit Act did not apply, the City of Brady Summary Judgment would not be binding on the federal Bankruptcy Court and the Bankruptcy Court would be free to make its own decisions as to the claim of Sanders. Presumably, the Bankruptcy Court would simply proceed to resolve the claim of Sanders under federal standards because the City of Brady Summary Judgment would no

longer constitute an impediment. However, this resort to "federal law" depends on asserting the position that the state courts lacked jurisdiction.

On the other hand, if the state court did have jurisdiction to issue the City of Brady Summary Judgment, the Full Faith and Credit Act does apply and requires the Bankruptcy Court to consider the effect of the City of Brady Summary Judgment. Sanders now has to explain what substantive federal law exists that allows the Bankruptcy Court to ignore the Full Faith and Credit Act and the City of Brady Summary Judgment. Sanders attempts, but fails, to provide the Court with this substantive federal law. No such law exists.

A. The Bankruptcy Court Followed Federal Law When It Issued Its Decision.

Contrary to the assertions in Sanders' Petition, the Bankruptcy Court did in fact refer to and rely on federal law in reaching its decisions. The use of full faith and credit by the Bankruptcy Court was a reference to federal law, because the Full Faith and Credit Act is a federal statute. It was therefore federal law that obligated the Bankruptcy Court to refer to the preclusion law of the State of Texas. Furthermore, the Order Confirming Plan represented a final federal judgment, and the Order Confirming Plan allowed the claims to be resolved by the state courts. The Bankruptcy Court therefore honored federal law when it recognized that the City of Brady Summary Judgment was binding.

B. Sanders Presents No Federal Law That Requires Or Allows The Full Faith And Credit Act To Be Ignored.

Sanders fails to explain what federal law exists that requires or allows the Full Faith and Credit Act to be ignored. Sanders contends that the Full Faith and Credit Act would not be "offended" by denying preclusive effect to the City of Brady Summary Judgment. Sanders argues that the purposes of the Full Faith and Credit Act are not served by allowing a state court judgment to interfere with a pending bankruptcy court proceeding. However, Sanders never specifies the "purpose" to which he refers.

Sanders apparently relies upon the argument that the Full Faith and Credit Act does not apply because no separate third action was initiated in the Bankruptcy Court after the City of Brady Summary Judgment was entered in the State Court Action. However, even if no third action existed and the bankruptcy case involved only one continuous proceeding, this distinction does not matter under federal law. As explained earlier, when a federal court and a state court have similar pending lawsuits, the decision of the first court to reach judgment shall be afforded *res judicata effect*. Accordingly, the Full Faith and Credit Act becomes applicable in the federal court action after a final judgment has been reached by the state court.

Furthermore, a third action did exist in the Bankruptcy Court. As explained earlier, the Motion To Distribute was not a continuation of the confirmation of the

Plan. The Order Confirming Plan constituted a final judgment of the Bankruptcy Court, and the Motion To Distribute was a separate contested matter within the Bankruptcy Court. Sanders concedes in his Petition that "[w]ere proceedings on Sanders' motion to compel distribution an entirely new action rather than further proceedings in the ongoing Bankruptcy Case, Sanders would agree that the Full Faith and Credit Act would require the State Court judgment be afforded preclusive effect." Petition, p. 14.

Sanders also argues that "the State Court has no interest in seeing its judgment control whether the Bankruptcy Court could conduct further proceedings in its own ongoing case." Petition, p. 15. However, state courts do have an interest in seeing that the relief they grant to their litigants will be honored and that the efforts of the state courts will not be wasted. Furthermore, the fact that the Full Faith and Credit Act is a federal statute shows that it is a federal interest that is being served by honoring the state court judgment. In *Parsons*, this Court referred to the "important values of federalism and comity embodied in the Full Faith and Credit Act." *Parsons*, 474 U.S. at 523.

C. The Decisions Of The Texas State Courts Were Consistent With Federal Law.

Sanders' arguments as to preclusion are apparently also based on the alleged lack of authority of the courts in Texas to interpret a federal court order, *i.e.*, the Order Confirming Plan. Sanders argues that any state court would be bound by federal law. However, the Texas state

courts did acknowledge and give full faith and credit to the Order Confirming Plan, a federal judgment. In fact, the Texas state courts, as courts of competent jurisdiction, carried out the terms of the Order Confirming Plan by reaching a decision on the claim of Sanders. In *Parsons*, this Court indicated that a state court could interpret the effect of a federal court judgment. The resolution of the claim of Sanders by the Texas state courts was also permitted under federal statutory law, which granted state courts concurrent jurisdiction to decide proceedings arising under, arising in, or related to a Chapter 11 case. The decisions of the Texas state courts were consistent with federal law.

D. The Situation Alluded To In *Marrese* Is Inapplicable Because The Texas State Courts Had Concurrent Jurisdiction.

Sanders refers to the comment that this Court "left the way open" for the denial of claim preclusion as a matter of federal law even if the state courts would grant the claim preclusion. *See* Petition, p. 13. This comment refers to the situation in which state courts would grant *res judicata* effect to a prior state court judgment rendered by a court that lacked jurisdiction. This Court left open the possibility that federal courts need not grant full faith and credit to the state court judgment if the state court rendering the judgment lacked jurisdiction, even if the courts of that state would grant *res judicata* effect. *See Marrese v. American Academy of Orthopaedic Surgeons*, 470 U.S. 373, 105 S.Ct. 1327, 84 L.Ed.2d 274 (1985). However,

because the Texas state courts had concurrent jurisdiction, this argument is inapposite to the City of Brady Summary Judgment.

VI. NO CONFLICT EXISTS BETWEEN THE CIRCUITS AS TO CIRCULAR PRECLUSION BECAUSE THE DISTRICT OF COLUMBIA CIRCUIT DID NOT ADDRESS THE APPLICATION OF TEXAS LAW, BECAUSE TEXAS LAW HAS NOT ADOPTED THE CONCEPT OF CIRCULAR PRECLUSION, AND BECAUSE THE FACTS OF THIS CASE DO NOT SUPPORT THE APPLICATION OF CIRCULAR PRECLUSION.

Despite the contentions of Sanders, no conflict exists between the Fifth Circuit and the District of Columbia Circuit with respect to the concept of "circular preclusion." The Fifth Circuit was bound under the Full Faith and Credit Act to consider the Texas law on preclusion, whereas the D.C. Circuit in the case cited by Sanders considered federal district court cases. *See McLaughlin v. Alban*, 775 F.2d 389 (D.C. Cir. 1985). Unless the D.C. Circuit considered and interpreted Texas law, no conflict can arise between the circuits. The D.C. Circuit Court, however, neither considered Texas law nor interpreted Texas law in a manner that conflicted with the interpretation of Texas law rendered by the Fifth Circuit.

Sanders fails to cite any case or other authority supporting the existence of the concept of "circular preclusion" under Texas law. If the concept does not exist under the Texas law of preclusion, the concept cannot serve as a basis for denying preclusive effect to the City of Brady Summary Judgment. The law in Texas is simply that *res judicata* applies to all issues that were litigated or *could*

have been litigated. *See, e.g., Segrest v. Segrest,* 649 S.W.2d 610, 612 (Tex. 1983).

Furthermore, *McLaughlin* is inapplicable to the case *sub judice* because the action filed in the federal district court in *McLaughlin* and the appeal to the D.C. Circuit were actually the same proceeding. In *McLaughlin,* the federal district court reached a final judgment (in Proceeding A), which was utilized for *res judicata* purposes by a second district court (in Proceeding B). The D.C. Circuit on appeal (in Proceeding A) ruled that it would not in turn use the judgment of the second district court (in Proceeding B) to affirm the judgment of the district court below (in Proceeding A).

The case *sub judice,* however, requires an analysis of a third proceeding (in Proceeding C), which was not necessary in *McLaughlin.* In the case *sub judice,* the Bankruptcy Court reached a final judgment on confirmation in the Order Confirming Plan (in Proceeding A), which was recognized by the Texas state courts in the State Court Action (in Proceeding B). However, the City of Brady Summary Judgment from the State Court Action (in Proceeding B) is not being used to affect the validity of the Order Confirming Plan (in Proceeding A), but to deny a request for damages under the Motion To Distribute (in Proceeding C).

Sanders argues that the Order Confirming Plan and the Motion To Distribute actually constituted only one proceeding and that the City of Brady Summary Judgment was being used for *res judicata* purposes in that

single proceeding. However, as explained in Section IV-C, the Order Confirming Plan was a final judgment binding on all parties and a proceeding separate from the Motion To Distribute. *McLaughlin* would be similar to the case *sub judice* only if Sanders had properly perfected his appeal from the Order Confirming Plan (in Proceeding A) and the Fifth Circuit was considering in that appeal whether the City of Brady Summary Judgment (in Proceeding B) should be afforded preclusive effect in the appeal of the Order Confirming Plan (in Proceeding A). Sanders did in fact file an appeal from the Order Confirming Plan, but the appeal was ultimately dismissed. *See* Petition Appendix C, p. A-26 (Judge Kelly Opinion). The Motion To Distribute is obviously a new proceeding that is separate and apart from the Order Confirming Plan and the appeal of the Order Confirming Plan. Consequently, the holding in *McLaughlin* does not apply.

VII. CONCLUSION

The Petition does not present any important questions of federal law which need to be settled by the Court, and no conflict exists between the decisions of the Fifth Circuit and the District of Columbia Circuit. The

Petition requesting a writ of certiorari should therefore be denied.

Respectfully submitted,

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